

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**



# 76-1181B

To be argued by  
ALBERT S. DABROWSKI

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## United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 76-1181

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UNITED STATES OF AMERICA,

*Appellee,*

—v.—

THOMAS WHITE,

*Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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### BRIEF FOR THE APPELLEE

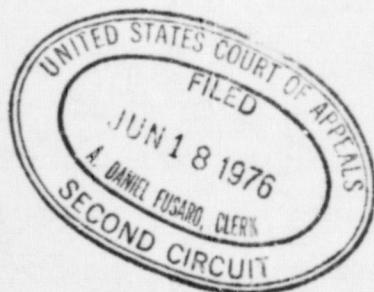
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**BRIEF FOR THE APPELLEE**

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**Statement of the Case**

On September 19, 1975 a Federal Grand Jury sitting in Hartford, Connecticut returned a two-count indictment charging Thomas White and Steven Randolph with armed robberies of the Terry Square Branch of the Connecticut Bank and Trust Company, Hartford, Connecticut on June 24 and July 10, 1975 in violation of Title 18, United States Code, Section 2113(a).<sup>1</sup>

On October 14, 1975 White and Randolph entered pleas of not guilty before the Honorable T. Emmet Clarie,

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<sup>1</sup> The same Grand Jury returned a second indictment against Thomas White charging him with the armed robbery of the Albany Avenue Branch of the Connecticut Savings and Loan Association on July 11, 1975. This indictment was dismissed on March 31, 1976 following imposition of sentence on the first indictment.

Chief Judge, United States District Court for the District of Connecticut. On November 10, 17 and 24, 1975 hearings were held on White's Motion to Suppress his July 20 confession to detectives of the Hartford Police Department and his July 21 confession to Special Agents of the Federal Bureau of Investigation. On January 22, 1976 Judge Clarie issued a written decision denying the defendant's motion.

On January 24, 1976 Randolph entered a plea of guilty to both counts of the indictment. Trial by jury of the defendant White commenced on March 9, 1976. On the second day of trial White entered a guilty plea to each count of the indictment reserving his right to appeal Judge Clarie's ruling on his motion to suppress. On March 31, 1976 Judge Clarie sentenced appellant White to fifteen years imprisonment on each of the two counts, to run concurrently. Co-defendant Randolph received an identical sentence. The appellant is presently incarcerated.

### **Statute Involved**

Title 18, United States Code, Section 2113(a):

§ 2113. Bank robbery and incidental crimes

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association,

with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny—

Shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

### Question Presented

Were the defendant's confessions voluntarily and intelligently given, without coercion as a result of withdrawal from narcotic addiction?

### Statement of Facts \*

The facts concerning the issue raised on this appeal were fully developed during the November 10, 17 and 24, 1975 hearings on the Motion to Suppress. On June 24 and July 10, 1975 White and Randolph entered and robbed the Ferry Square Office of the Connecticut Bank and Trust Company, 2775 Main Street, Hartford Connecticut of \$2,991.75 and \$3,067.94, respectively.<sup>2</sup> The defendant Randolph was arrested on July 10, 1975 within a few hours of the second bank robbery. Following his arrest Randolph admitted robbing the bank with White on both occasions. During the period between July 13th and 20th, 1975 White telephonically contacted Hartford Police Detective Edgar Campbell on numerous occasions

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\* References marked Tr. refer to Suppression Hearing Transcript.

<sup>2</sup> White denied robbing the banks during his testimony at the suppression hearing. (Tr. at 204, 208).

and indicated that he wanted to give himself up.<sup>3</sup> During these conversations White requested to see a doctor and demanded and received assurances from Detective Campbell that he would not be beaten up if he surrendered.<sup>4</sup> During a telephone conversation with Detective Campbell a few hours prior to his arrest White stated "I had some stuff (heroin) . . . but I'll need one (a doctor) before the nights over." He added "a doctor doesn't have to be at the police station—I just want to make sure I see a doctor." (Ruling on Motion to Suppress at 2, No. 6; Tr. at 234, 236). Detective Campbell told White that arrangements would be made for him to see a doctor if he actually surrendered.

White surrendered to Detective Edgar Campbell at approximately 4:30 p.m. on July 20, 1975. White was orally advised of his constitutional rights by Detective Campbell and placed in the back seat of a police car driven by Detective Jesse Campbell (Edgar Campbell's brother). Enroute to the Hartford Police Station Jesse Campbell asked Edgar Campbell and White if they had any objection to his buying Kentucky Fried Chicken and delivering it to two men who were working at his home. In the discussion that followed White stated, *inter alia*, "No, I'm all right, man. I need a doctor, but I need a doctor probably later on tonight sometime." (Tr. at 239). During the trip to the police station White was advised that the police had seven separate warrants for his arrest. After each warrant was particularized White admitted his involvement in six of the offenses, including

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<sup>3</sup> The Hartford Police Department was in possession of seven warrants for White's arrest including two warrants related to the June 24th and July 10th bank robberies. (Tr. at 27-28).

<sup>4</sup> White testified that his mother had told him the Hartford Police were going to kill him. (Tr. at 188). In addition, White was afraid to give himself up because he had heard that the FBI had "beat up" Randolph at the time of this arrest. (Tr. at 220, 221).

each of the bank robberies which are the subject of this appeal. (Tr. at 28).

At 5:23 p.m., after arriving at the police station, White was again advised of his constitutional rights by Detective Edgar Campbell who read from a standard advice of rights form. White then read and signed the advice of rights form (Government Exhibit 1; Tr. at 29).

During the period between 5:30 P.M. and approximately 7:15 P.M., White was questioned by Edgar Campbell concerning, and freely and voluntarily admitted, his participation in a number of criminal matters, including, but not limited to, the armed robberies of The Connecticut Bank and Trust Company on June 24, and July 10, 1975, and the Connecticut Savings and Loan Association on July 11. Ruling at 3, No. 17).

Between 7:15 and 8:00 p.m. a written statement summarizing White's oral admissions was prepared by Detective Jesse Campbell. "After reading the statement and having it read to him, White, in the presence of Edgar Campbell and Jesse Campbell, signed the statement." (Ruling at 4; Government Exhibit 1A).

At approximately 8:00 p.m. on July 20 Jesse Campbell advised the Hartford Police duty captain that White had requested to see a doctor. At 9:22 p.m. White was examined by Dr. Louis Tonken. Judge Clarie summarized Dr. Tonken's testimony in his Ruling on pages 6-7:

37. At 9:22 P.M. on July 20, 1975, White was examined by Dr. Louis Tonken. Dr. Tonken has practiced medicine for over thirty-six (36) years and pursuant to a contract with the Hartford Police Department visits prisoners at the Morgan Street lockup between 9:00 P.M. and 10:00 P.M. on a daily basis.

38. Upon arriving at the jail on July 20th Dr. Tonken was advised by the duty captain that White had requested to see a doctor.

39. After examining White Dr. Tonken concluded that White was a heroin addict.

40. Dr. Tonken further concluded that White was beginning to show signs of withdrawal.

41. Dr. Tonken administered 10 mg. of methadone to White.

42. Dr. Tonken concluded that White was not in the advanced stages of heroin withdrawal. Although Dr. Tonken had no present recollection of treating White on July 20, he would have administered 20 mg. of methadone to White had White showed advanced or severe signs of withdrawal from heroin.

During the period between 8:00 p.m. on July 20 and 9:00 a.m. on July 21 White was held at the police station but was not questioned. At approximately 9:00 a.m. on July 21 White was taken to an interview room in the Hartford Police Station by Detective Madison Bolden. Detective Bolden did not know that White had given incriminating statements and had seen a doctor during the previous evening. (Tr. at 75-76, 89). Detective Bolden advised White of his constitutional rights and questioned him about the July 11, 1975 armed robbery of the Connecticut Savings and Loan Association. White denied being directly involved in the robbery but stated that he might know something about it. (Tr. at 90).<sup>5</sup>

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<sup>5</sup> On the previous evening White orally admitted to Detective Edgar Campbell that he robbed the Connecticut Savings and Loan Association with another individual he refused to identify. (Tr. at 245-247). However, when Jesse Campbell prepared White's written confession he failed to include a paragraph concerning this bank robbery in the statement. Detective Bolden was respon-

[Footnote continued on following page]

At 9:20 a.m. FBI Special Agents David Miller and Harry Willis joined Detective Bolden in the interview room. Agent Miller advised White of his constitutional rights by reading from a standard "Advice of Rights" form. (Government Exhibit 3). White read and signed the form at 9:25 a.m. White then confessed to the armed robberies of the Connecticut Bank and Trust Company on June 24 and July 10, and the Connecticut Savings and Loan Association on July 11, 1975. (Government Exhibits 5-7). He denied being involved in a robbery of a Windsor, Connecticut bank and refused to identify the individuals who robbed the above two banks with him.<sup>2</sup>

## ARGUMENT

### I.

**The defendant's confessions were voluntarily and intelligently given, without coercion as a result of withdrawal from narcotic addiction.**

The appellant contends that the District Court erred in refusing to suppress incriminating statements relating to armed robberies of two federally-insured banks on three separate occasions. He asserts that his confessions

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sible for the investigation of this particular bank robbery. When Bolden arrived at the police station he learned that White, the chief suspect in the bank robbery, was in custody. Bolden interviewed White without the knowledge that White had already orally incriminated himself with regard to the July 11 robbery to Edgar Campbell.

<sup>2</sup>As previously stated, Steven Randolph was arrested on July 10, 1975 in the vicinity of the Connecticut Bank and Trust Company at which time he admitted robbing that bank with White on June 24 and July 10. The individual who participated with White in the July 11, 1975 armed robbery of the Connecticut Savings and Loan Association has not been apprehended.

were not voluntarily and intelligently given because they were made while he was suffering from the adverse affects of withdrawal from narcotic addiction.

At the suppression hearing below there was a considerable amount of conflicting testimony concerning the circumstances under which the confessions were given and the nature and extent of the appellant's withdrawal from heroin. White testified that he denied participating in any robberies until after the first half hour of questioning at the police station. (Tr. at 134-36). Detective Jesse Campbell testified that White was asked about the June 24 and July 10 Connecticut Bank and Trust Company robberies while in the police car following his arrest. Campbell testified that White responded "I was down with it, but I won't tell you who was with me. I take the weight by myself." (Tr. at 28). White repeatedly testified that he was suffering from the adverse effects of withdrawal from heroin addiction on both July 20 and 21. He testified that the 10 mg. dose of methadone given to him by Dr. Tonken at 9:22 p.m. on July 20 did not "work" for more than an hour. (Tr. at 144). Detectives Edgar and Jesse Campbell, Bolden and Special Agents Miller and Willis all testified that White appeared normal at all times during questioning.

However, the Court credited the testimony of the police officers and Special Agents over the testimony of the defendant. (Ruling at 9, Nos. 63, 64). Therefore, this Court's review on appeal involves "facts found from conflicting testimony, having in mind that a '[d]etermination of credibility was for the judge who saw and heard the witnesses,' *United States v. Fernandez*, 456 F.2d 638 (2d Cir. 1972), and that his findings must stand unless shown to be clearly erroneous, *United States v. Sheard*, 473 F.2d 139, 146 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 943 (1973)." *United States v. Boston*, 508 F.2d 1171, 78 (2d Cir. 1974), *cert. denied*, 421 U.S. 1001 (1975).

After listening to conflicting testimony during a protracted suppression hearing Judge Clarie found the following as fact:

17. During the period between 5:30 P.M. and approximately 7:15 P.M. (on July 20), White was questioned by Edgar Campbell concerning, and freely and voluntarily admitted, his participation in a number of criminal matters, including, but not limited to, the armed robberies of The Connecticut Bank and Trust Company on June 24, and July 10, 1975 and the Connecticut Savings and Loan Association on July 11.

\* \* \* \* \*

30. Both Jesse Campbell and Edgar Campbell were knowledgeable as to the symptoms and characteristics of narcotic addiction and withdrawal. During ten (10) months in 1974 and early 1975, Edgar Campbell worked as an undercover narcotics agent and observed individuals undergoing withdrawal from heroin on several separate occasions.

31. At no time did White appear to Jesse Campbell or Edgar Campbell to be suffering from the symptoms or characteristics associated with withdrawal from narcotic addiction or from any adverse effects associated with drug addiction.

32. White's physical and mental condition appeared to Edgar Campbell and Jesse Campbell as normal and was normal prior to and during the questioning between 4:30 P.M. and 8:00 P.M. on July 20th.

33. No promises or threats other than those already described herein were made by anyone to Thomas White.

34. No complaints or special requests were made by White during the period of questioning referred to above.

35. The oral admissions and statements by White were free and voluntary and were made with full knowledge of his constitutional rights.

\* \* \* \* \*

51. (On July 21, 1975) White freely and voluntarily admitted his participation in the armed robberies of the Connecticut Bank and Trust Company on June 24 and July 10 and the Connecticut Savings and Loan Association on July 11, 1975.

\* \* \* \* \*

56. At no time did White appear to Agents Miller and Willis or to Detective Bolden to be suffering from symptoms or characteristics associated with withdrawal from drug addictions or from any adverse effects associated with drug addiction.

57. White's physical and mental condition appeared to Agents Miller and Willis and to Detective Bolden to be normal and was normal immediately prior to and during the questioning of July 21.

58. No promises or threats were made to White by Agents Miller and Willis or Detective Bolden on July 21.

59. No complaints or requests were made by White during the questioning of July 21.

60. The oral admissions and related statements made by White on July 21 were free and voluntarily and were made with full knowledge and understanding of his constitutional rights.

61. Prior to making and signing each confession, Thomas White was fully and properly advised of his constitutional rights.

62. Prior to making and signing each confession, Thomas White was fully and properly advised by the police officers that anything said by

him could and would be used against him in a court of law.

\* \* \* \* \*

65. Thomas White fully understood the import, the consequences, and the significance of these statements at the time they were given.

66. Although Thomas White was a heroin addict on the dates these confessions occurred, he was not so influenced by drugs, nor suffering from withdrawal symptoms, as to be unable to comprehend and fully understand what he was doing at the time he confessed.

67. Each of the confessions was voluntarily and intelligently given, without any threats, promises or coercion.

Whether a confession is voluntary is a question of fact to be determined from the "totality of the surrounding circumstances." *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). There is no question that White was a heroin addict on the dates the confessions were given. However, there is no *per se* rule mandating that confessions made while under the influence of narcotics or during a withdrawal period are inadmissible. The central question of voluntariness in light of all the surrounding circumstances remains the same. *United States v. Harden*, 480 F.2d 649 (6th Cir. 1973); *Ortiz v. United States*, 318 F.2d 450 (9th Cir. 1963); *United States v. Hollis*, 450 F.2d 1207 (5th Cir. 1971); *United States v. Arcediano*, 371 F. Supp. 457 (D. N.J. 1974).

The government concedes that if White was coerced into confessing by promises of relief from withdrawal if he confessed then any such confession would be inadmissible. *Hayes v. Washington*, 373 U.S. 503 (1963); *United States ex rel. Collins v. Maroney*, 287 F. Supp. 420 (E.D. Penn. 1968). However, the circumstances in the present case differ substantially from *Hayes v. Washington* (where the defendant was threatened by police and held incommunicado for 16 hours) and *Maroney* (where a

detective who participated in the interrogation testified that the defendant's "withdrawal symptoms were very substantial"). White surrendered at 4:30 p.m. on July 20. He confessed in a car on the way to the police station. During the next two hours he gave detailed confessions concerning numerous crimes at the police station. The officers, both of whom had experience dealing with drug users, did not observe any of the symptoms or characteristics generally associated with withdrawal. He was promised that he would not be "beaten up" and that he would see a doctor. He was not assaulted or threatened in any manner and saw a doctor within four hours of his arrival at the police station.

In *Ortiz v. United States*, 318 F.2d 450 (9th Cir. 1963) the defendant asserted that his confession was invalid because it was given while he was undergoing withdrawal, with symptoms of a bloody nose and cramps which caused him to sink to the floor during questioning. The police officers present during questioning denied that these symptoms were shown by defendant. The Court stated "there exists a conflict in the evidence which the trier of fact alone must determine." *Ortiz, supra*, at 453. The Court found:

A reading of the record gives no indication that the influence of the narcotic drug affected appellant's ability to comprehend questions or that he was incoherent. He apparently answered all questions coherently and in an intelligible manner. *Ortiz, supra* at 453.

The record below supports Judge Clarie's finding that White's confessions were voluntary. In addition, White's claim that his statements were produced through coercion ignores the fact that he was selective in his admissions. He denied being involved in an assault and several other

bank robberies. He refused to name Steven Randolph as the individual who robbed two banks with him even though he was told that Randolph had confessed and named him. These factors militate against his claim of involuntariness. See *United States v. Arcediano*, *supra* at 467.

The appellant, in an effort to buttress his claim that he was suffering from severe withdrawal symptoms, states that "[o]n the 21st of July, after signing the second set of confessions, the appellant was immediately arraigned and within a few hours placed in a hospital for his heroin addiction." (Brief for Appellant at 14). The questioning of White on July 21, 1975 terminated prior to 11:50 a.m. (FBI Interview Log, Government Exhibit 4). At 7:00 p.m. White reported to the medical unit at the Hartford jail where he was examined by a medic. The medic found White's blood pressure, pulse and pupil dilation to be normal. (Tr. at 170). The medic telephoned a doctor, and according to infirmary records, "made him aware of indications of heroin addiction, and possibly of withdrawal." (Tr. at 172). White was not examined by the doctor until the next day. The appearance of symptoms associated with advanced stages of withdrawal, such as vomiting, were not observed in White until July 23.<sup>7</sup> There is no question that White suffered through withdrawal during the latter part of the week. Eloise White, the defendant's mother, was with him when he was arrested and saw him in the infirmary a week later. On cross-examination she testified:

Q. You saw him a week later and his eyes were running?

A. Yes.

Q. Was his nose running?

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<sup>7</sup> White complained of nausea on July 22 but was not actually observed vomiting until July 23. (Tr. at 176-77).

A. Yes, and his jaws were sunk in. He had a bathrobe and he was wiping his face.

Q. Was he cramped over?

A. Yes, cramped over on the screen, like this.

Q. And also physically sick?

A. Yes.

Q. Was he in that condition on July 20th, 1975 the day he was arrested?

A. No, this was the day I went to see him at the jailhouse. (Tr. at 123).

As Judge Clarie stated, "[w]hile later . . . at the Hartford Jail Dispensary, the records do show severe withdrawal symptoms, the time period is sufficiently remote as not to preclude (the confessions) from admission into evidence." (Ruling at 11).

A review of the evidence developed at the suppression hearing fully supports the finding of the District Court that "each of the confessions was voluntarily and intelligently given, without any threats, promises or coercion." (Ruling at 10, No. 67).

## CONCLUSION

For the foregoing reasons, the government submits that the ruling of the District Court is sound and should be affirmed.

Respectfully submitted,

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

No 76-1181

UNITED STATES OF AMERICA

Appellee

v.

THOMAS WHITE

AFFIDAVIT OF SERVICE BY MAIL

Albert Sensale, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 914 Brooklyn Ave Brooklyn, N.Y.

That on the 18th day of June, 1976, deponent served the within Brief for the Appellee upon Richard R. Brown, Esq. O'Connell & Brown, One Financial Plaza, Hartford, Connecticut 06103

Attorney(s) for the Appellant in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

*Albert Sensale*

Sworn to before me,

This 18th day of June 1976  
*Shirley Amaker*

SHIRLEY AMAKER  
Notary Public, State of New York  
No. 24 - 4502766  
Qualified in Kings County  
Commission Expires March 30, 1977